

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



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Staff:	ALB/LB
Staff Report:	October 25, 2001
Hearing Date:	November 13-16, 2001
Commission Action:	

**Item Tu 13e****STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-01-269

**APPLICANT:** California Department of Parks and Recreation,  
Orange Coast District

**PROJECT LOCATION:** Crystal Cove State Park, 8471 Pacific Coast Highway  
Laguna Beach, Orange County

**PROJECT DESCRIPTION:** Implementation of the State Parks *Investigations and Interim Development Plan* for the Crystal Cove Historic District, including the placement of an interim sewage holding system; conversion of cottages to an interpretive center, lifeguard headquarters and temporary staff housing; installation of signage; and repairs to cottages, boardwalk and stairways. Minor grading (approx. 10 cubic yards cut) is proposed for placement of below-ground pump units for the interim sewage system.

**SUBSTANTIVE FILE DOCUMENTS:** Crystal Cove Historic District Investigations and Interim Protection Plan Final Environmental Impact Report (SCH# 2001031001), June 29, 2001 and Crystal Cove State Park Public Works Plan, 1982.

**SUMMARY OF STAFF RECOMMENDATION:**

The California Department of Parks and Recreation proposes to carry out their *Investigations and Interim Development Plan* for the Crystal Cove Historic District. The project involves short-term structural repairs and improvements to maintain the cottages while a long-term plan is being developed. The major issues raised by the proposed development are wave uprush, maintenance of public access, and water quality.

Staff recommends the Commission **APPROVE** the proposed development with six (6) special conditions requiring 1) an agreement to assume the risk associated with development at the site; 2) an agreement not to construct a future shoreline protective device should one be needed to protect the cottages or associated development; 3) an agreement that future development be reviewed by the Commission; 4) use of construction best management practices (BMPs); 5) submittal of a maintenance and monitoring plan for the Interim Sewage Holding System, and 6) archaeological monitoring.

**LIST OF EXHIBITS:**

1. Vicinity Map
2. Crystal Cove Map
3. Historic District Site Plan
4. Project Plans for Interim Sewage Holding System
5. ADA Parking Lot Plan
6. Interim Measures for Cottages
7. Crystal Cove State Park Water Quality Action Plan
8. *Secretary of the Interior Standards for the Treatment of Historic Properties*

**STAFF RECOMMENDATION:**

Staff recommends that the Commission APPROVE the permit application with special conditions.

**MOTION:**

***I move that the Commission approve CDP No. 5-01-269 pursuant to the staff recommendation.***

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

**I. Approval with Conditions**

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

**II. Standard Conditions**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. **Special Conditions**

#### 1. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site of the Crystal Cove Historic District may be subject to hazards from waves, storm events, flooding, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defiance of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. Prior to any conveyance of the property that is the subject of this coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (A) of this condition. The restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

#### 2. **No Future Shoreline Protective Device**

- A(1) By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the Historic District improvements approved pursuant to Coastal Development Permit No. 5-01-269 including, but not limited to, the repaired cottages and boardwalk, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to

construct such devices that may exist under Public Resources Code Section 30235.

- A(2) By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the permittee and/or landowner shall remove the development authorized by this permit, including the restroom structure and stairway, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- A(3) In the event the shoreline recedes to within 10 feet of the cottages but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the permittee, that addresses whether any portions of the development is threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the boardwalk and/or cottages without shoreline protection including, but not limited to, removal or relocation of portions of the development. If the geotechnical report concludes that the cottages or any portion of the development is unsafe, the permittee shall, in accordance with a coastal development permit, remove the threatened portion of the development.
- B. Prior to any conveyance of the property that is the subject of this coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (A) of this condition. The restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

### 3. Future Improvements

This coastal development permit (5-01-269) is only for implementation of the *Investigations and Interim Protection Plan* at the Crystal Cove Historic District, as expressly described and conditioned herein. Any non-exempt future improvements or development, including but not limited to implementation of the *Preservation and Public Use Plan*, shall be submitted for Commission review and shall not commence unless Commission approval is granted. New development, unless exempt, shall require an amendment to this permit, a new coastal development permit from the Coastal Commission or its successor agency, or may be processed as a Public Works Plan Specific Project pursuant to Section 30606 of the Coastal Act.

4. Submittal of a Maintenance and Monitoring Plan

A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, a Maintenance and Monitoring Plan for the Interim Sewer Holding System that demonstrates that the system is located, designed, installed, operated, inspected, and maintained to prevent the discharge of pollutants onto the surface of the ground. The plan shall include, at a minimum, the following items:

1. A schedule for sewage pick-up and
2. A contingency plan in case of leakage.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be allowed to enter coastal waters;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction related materials, sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone.

6. Archaeological Resource Management and Protection

A State-certified paleontologist/archeologist shall monitor all grading operations and/or excavation where there is a potential to affect cultural or paleontological resources based on the required research design. If grading operations or excavation uncover paleontological/archeological resources, the paleontologist/archeologist monitor shall suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/archeological resources. If found to be significant, the site(s) shall be tested and preserved until a recovery plan is completed to assure the protection of the paleontological/archeological resources.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. PROJECT LOCATION, BACKGROUND AND DESCRIPTION**

###### Project Location

Crystal Cove State Park is located in Orange County between the communities of Corona del Mar to the north and Laguna Beach to the south (Exhibit 1). The 2,791-acre State Park includes a 3.25-mile long coastal section west of Pacific Coast Highway (PCH) and several inland areas, as shown in Exhibit 2. The proposed project site is the Crystal Cove Historic District, located on the seaward side of PCH. The Historic District consists of forty-six (46) seaside cottages. The Historic District was listed on the National Register of Historic Places in June 1979 for its significance as a unique self-contained Southern California coastal community with a vernacular character that has remained in tact since the 1930s. The cottages were previously leased as private residential units, but have stood vacant since the tenants moved out in July 2001.

###### Project Background and Need

Since the departure of the cottage tenants, the California Department of Parks and Recreation (DPR) has assumed all routine maintenance responsibilities of the Historic District while developing a plan for long-term use of the site. The DPR has conducted several planning efforts to preserve and manage the Historic District, but abandoned them after public controversy and tenant litigation. DPR cancelled the implementation of the most recent planning effort, a resort concession contract, early in 2001 after public concerns were expressed. With the cancellation of the resort concession contract, DPR is reinitiating planning efforts for the Historic District and, in the short-term, proposes to implement the *Investigations and Interim Protection Plan* to manage the site.

As described by the applicant, the project is necessary to address the following issues:

1. *First, the Santa Ana Regional Water Quality Control Board (RWCQB) has issued a Cease and Desist Order to the Department [of Parks and Recreation] to eliminate the possible discharge of wastewater into the ocean.*
2. *Second, the cottages and their related infrastructure are undergoing continued deterioration and loss of historic fabric. [due to their current vacancy]*
3. *Third, the tenants agreed to depart on July 8, 2001 allowing further study of the cottages while requiring the Department to provide additional security.*
4. *Lastly, additional information is needed about the cottages and site for planning and restoration purposes. This information will build on data compiled for the 1994 Crystal Cove Historic District Legislative Report and encompass changes occurring since 1994.*

###### Project Description

DPR is proposing to carry out the first of two phases of planning efforts at the Crystal Cove Historic District. The current application is for implementation of their *Investigations and Interim Protection Plan*, which includes a number of projects that will allow DPR to manage the Historic District in the short-term, including testing, repairs and conversion of cottages (Exhibit 3). Specifically, the proposed project involves the following:

- Investigations to evaluate water quality, hazardous materials, geotechnical stability, underground infrastructure and the condition of the each cottage;
- Installation of an interim sewage holding system, including placement of eleven above-ground tanks (seven 6' high x 7' diameter 1500 gallon tanks and four 4'

high x 7' diameter 1000 gallon tanks), eight 24" diameter grinder pumps/sump tanks, new above-ground discharge lines and connection to existing below grade lines (see Exhibit 4);

- Sewer pump excavation of approximately 10 cubic yards;
- Lattice enclosures to screen the sewage holding tanks;
- Conversion of the "Art Studio/Yacht Club" to interpretive center use;
- Conversion of Cottage 15 for use as a lifeguard headquarters;
- Conversion of Cottages 14, 21, 34, and 35 for residential employee use;
- Installation of interpretive signage and warning signs at various location, including the entrance to the Historic District;
- Closure of portions of the boardwalk for safety purposes;
- Repair of portions (approx. 10%) of the boardwalk;
- Placement of a temporary ADA compliant beach path (removable plastic mat, approximately 4 feet wide and 200 feet in length) (see Exhibit 5);
- Interior and exterior repairs to the cottages, including structural bracing and roof repair (see Exhibit 6);
- Repairs to existing stairways;
- Permanent authorization of development allowed under Emergency Permit No. 5-01-269-G, including 1) installation of a standard pipe gate at the junction of the Historic District access road and the Park road and 2) placement of a temporary kiosk along the Historic District road.

The gate is open during regular park hours (6:00 am to sunset). The gate is used to close the Historic District road during the evening hours to deter vandalism and potential loss of historic resources. The kiosk is a free-standing, portable structure constructed on skids. The kiosk is used to regulate admittance to the ADA-accessible Historic District parking lot for holders of disabled placards.

The proposed project includes rehabilitation and reuse of certain cottages for an interpretive center, lifeguard headquarters, State Parks offices and temporary living accommodations for State Parks personnel. Four cottages will be occupied for residential (employee) use-- 14, 21, 34, and 35. Cottages 15, 5, 38 and 39 will be used for DPR lifeguard headquarters, a maintenance office and parking planning offices, respectively.

The presence of on-site personnel is intended to improve security and prevent vandalism. At present, the cottages are vacant and subject to potential defacement. In addition to increased security, occupation of the cottages will allow for day-to-day maintenance typically carried out by a tenant or homeowner.

Installation of the proposed Interim Sewage Holding System will accommodate the proposed occupation and use of the cottages. In response to the RWQCB Cease and Desist Order, the existing septic system is no longer utilized. On July 8, 2001, the DPR ceased operation of the 46 residential cottages, thereby eliminating sewage disposal to the sub-surface sewage disposal system.

The proposed *Investigation and Interim Development Plan* is intended to obtain data to assist in the second phase of the planning efforts—development of a long-term plan for the site. A subsequent coastal development permit application will be submitted for the *Preservation and Public Use Plan*, which will determine the ultimate direction for use of the Historic District.

**B. STANDARD OF REVIEW AND CONSISTENCY WITH THE CRYSTAL COVE PUBLIC WORKS PLAN**

Section 30605 of the Coastal Act provides, in pertinent part, that:

*Where a plan for a public works or state university or college or private university development project has been certified by the commission, any subsequent review by the commission of a specific project contained in the certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1.*

Section 30606 of the Coastal Act states:

*Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university shall notify the Commission and other interested persons, organizations, and governmental agencies of the impending development and provide data to show that it is consistent with the certified Public Works Plan or Long Range Development Plan. No development shall take place within 60 working days after the notice.*

Section 13359 of the Commission's Administrative Regulations states:

*(b) The Commission shall...determine whether the proposed development is consistent with the certified public works plan...*

The Crystal Cove Public Works Plan (PWP) was approved by the Commission with conditions on May 20, 1982. Conditions were met on August 26, 1982. The PWP includes the Crystal Cove State Park General Plan, the On-Site Maintenance Plan and the Crystal Cove State Park Historic District Development and Public Use Plan. Section 30605 of the Coastal Act, cited above, establishes the standard of review. The first threshold question is whether the specific project is contained in the PWP. If it is, then the Commission's review is limited to the imposition of conditions. The Commission can not deny a project which it previously certified as part of the PWP; however, the Commission can regulate the manner in which the project is carried out to bring it into conformance with the PWP. Once it is determined that a project is contained in the PWP, the second question is whether or not the project is consistent with the PWP.

When a proposed project is contained in sufficient detail in a certified public works plan the coastal development permit process is superceded by the public works process. If a project is not included in the certified public works plan, then a coastal development permit from the Commission is required. In this case, the proposed project involves the implementation of the DPR's *Investigations and Interim Development Plan*. The proposed project includes development that is both contained in, and consistent with, the public works plan and development which is not contained in the public works plan. The applicant chose to submit the entire project for a coastal development permit. The Commission finds that the proposed project was not previously contemplated and is therefore not contained in the PWP. At the time the PWP was certified by the Commission, the cottages were under long-term leases that were to be phased out and replaced by various forms of adaptive reuse. There are no provisions for an "interim" use of the site provided in the PWP. As such, a coastal development permit (CDP) has been applied for by State Parks. The Coastal Act will serve as the standard of review for the proposed project, with the Crystal Cove Certified PWP serving as guidance.

The Land Use and Facilities Element of the Certified PWP General Plan addresses the Historic District as follows:



*Interpretive concepts, potential historical and architectural emphasis, and themes for the historic district are discussed in the Interpretive Element. In addition to the historical features, there are potentials for other visitor activities in keeping with the character of the area that have been identified. These include various day-use activities such as general beach-related recreation, picnicking, sightseeing, photography, painting and sketching, and nature study. Visitor parking in the historic district will be limited to a small area for scuba divers and disabled persons. A turn-around and passenger loading area for buses will be located near the entrance road and the highway. Parking for 600 cars and buses will be located inland of the highway, with a pedestrian trail connection under the highway to the historic district and beach. If it is determined in the future that a shuttle service is feasible, shuttle vehicles will also use this route to move people from the parking area to various beach destinations.*

*In accordance with federal standards for maintenance of structures in historic district, no new structures will be constructed in the Crystal Cove Historic District, except for interim, portable restrooms required to serve day-use visitors.*

The Interpretive Element of the General Plan provides direction for future educational programs and discusses adaptive reuse of the cottages. The document states that a “variety of guided and self-guided walks are proposed for this area, with topics such as vernacular architecture, development of the cove as a community, and the secondary theme of use of this portion of the Orange County coastline for early movie backdrops.” The Element acknowledges that adaptive uses for the cottages cannot be determined on a house-by-house basis until access is granted to the interior of each building.

The Crystal Cove Historic District Development and Public Use Plan (prepared August 1982) provides a more detailed analysis of existing conditions at the site. The Plan includes an examination of the interiors and exteriors of the building, a matrix of findings, plan for development and public use, and recommendations for relocation of tenants. The Plan concludes that almost all of the structures can be retained and converted to an adaptive use. The Plan lays out the two objectives of the Historic District: 1) to preserve and protect the special quality of this unique example of a Southern California beach community and 2) to provide full public use and enjoyment of the historic district in a manner consistent with the preservation purpose. A variety of adaptive uses are identified in the Plan. These include the following:

- *Hostel Uses*
- *Overnight Rental Units*
- *Interpretive Uses*
- *Various Group Uses including, environmental education classes; marine studies, art and photography classes and seminars, small workshops/conferences, and student intern programs;*
- *Docent/Volunteer Uses;*
- *Park Administrative Uses;*
- *Food and Sundry Goods—Concession Uses.*

The Plan states, “all existing cottages can be upgraded to meet current State Historic Building Code requirements.” Lastly, the Plan provides a timeline for relocation of residents and evaluation of future public uses.

The proposed project involves repairs to existing structures and facilities within the historic district. The project also includes on-site personnel to provide daily maintenance and

security of the site. No new structures are proposed. As such, implementation of the project is consistent with land use and maintenance policies outlined in the certified PWP.

## **C. HAZARDS**

Section 30253 of the Coastal Act states, in relevant part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

### Wave and Flooding Hazards

The subject site at Crystal Cove Historic District is subject to seasonal wave attack. The beach located seaward of the wooden boardwalk does not adequately buffer the beachfront development from wave uprush during storm events and high tides (particularly during the winter months). Based on staff reconnaissance and acknowledgment by the applicant, waves often run up onto the boardwalk. Wave activity has caused much of the damage necessitating the current repairs to the boardwalk. These circumstances present obvious potential for wave uprush damage and flooding to occur at the subject site in the future.

Therefore, the Commission finds that it is necessary to require the preparation of an assumption-of-risk agreement (Special Condition No. 1). With this standard waiver of liability condition, the applicant is notified that the boardwalk and ultimately the cottages are located in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition ensures that future tenants will be informed of the risks and the Commission's immunity of liability.

The assumption-of-risk condition is consistent with prior Commission actions for beachfront development in Orange County since the 1982-83 El Nino storms. For instance, the Commission approved CDPs 5-00-262 (Punteriero) and 5-99-477 (Watson) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed restrictions on construction of new beachfront homes throughout Newport Beach and Seal Beach, whether on vacant lots or in conjunction with the demolition and replacement of an existing home. Recent examples include coastal development permits 5-00-492 (Palm), 5-00-466 (Steffensen), 5-00-420 (Collins), 5-00-285 (Collins), 5-00-192 (Blumenthal) and 5-99-423 (Evans).

### Future Protective Devices

Section 30253 of the Coastal Act requires that new development shall not require construction of protective devices that would substantially alter natural landforms. The project involves repair to the existing boardwalk (approximately 10% replacement) and the placement of a new temporary ADA compliant beach path (4' wide x 200' long plastic mat).

The project also involves a variety of repairs to the existing cottages that will extend the usable life of each structure. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if continued wave activity would affect the proposed development and necessitate construction of a shoreline protection device.

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

No shoreline protection device is currently proposed. The applicant recognizes that the site is subject to wave uprush activity, but sees no need for a seawall now or in the future. In addition, the proposed ADA path will be removable during severe storm events. More importantly, it is the position of the State Department of Parks and Recreation to discourage construction of structural protective devices.

To ensure that the applicant acknowledges and accepts the prohibition of future protective devices, the Commission imposes Special Condition No. 2, which requires the applicant to submit a written agreement placing the applicant and their successors in interest on notice that no protective devices shall be permitted to protect the proposed development and that the applicant waives, on behalf of itself and all successors and assigns, any rights to construct protective devices that may exist under Coastal Act Section 30235. In addition, the Commission imposes Special Condition 3 to notify the applicant that all future development at the site, including implementation of the *Preservation and Public Use Plan* (the long-term plan for the site), requires Commission approval either as a CDP or through the PWP process. As conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

#### **D. COASTAL ACCESS**

Section 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30604(C) of the Coastal Act requires that permit applications between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. The proposed development is located between the first public road and the sea at Crystal Cove State Park. Public access to the Historic District and adjacent sandy beach is available between regular operational hours of 6:00 am to sunset. Public parking is available at the Los Trancos parking lot, inland of Pacific Coast Highway.

As defined by Section 30106 of the Coastal Act, "*development*" means change in the density or intensity of use of land or construction, reconstruction, demolition, or alteration of the size of any structure. The proposed project involves structural repairs and conversions in use of former residential cottages. Due to the proposed change in intensity of use, that portion of the project is considered development under the Coastal Act.

The Coastal Act provides that development should maintain and enhance public access to the coast and encourages the provision of lower cost visitor and recreational facilities. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast. It states, in relevant part:

*The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.*

Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. It states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Public access and recreation is discussed in the Land Use and Facilities Element of the Certified PWP General Plan as follows:

*The emphasis for recreation use at Crystal Cove State Park will be placed on providing a variety of appropriate recreation opportunities to enhance visitor enjoyment of the park.*

General Plan objectives #3 and #5 state the following:

3. *To provide opportunities for a variety of recreational uses of low to high intensity that will be compatible with the surroundings, and consistent with the park purpose.*
5. *To protect and interpret the significant natural and cultural resources of the park.*

As stated previously, the Development and Public Use Plan provides two objectives of the Historic District:

1. *To preserve and protect the special quality of this unique example of a Southern California beach community; and*
2. *To provide full public use and enjoyment of the historic district in a manner consistent with the preservation purpose.*

As stated previously, Section 30252 of the Coastal Act requires that new developments maintain and enhance public access to the coast. While no public parking is provided within the Historic District, the Los Trancos parking lot located inland of PCH provides 450 spaces. A tunnel leads from the parking lot to the Historic District on the seaward side of PCH. During implementation of the interim development plan, ADA parking (7 total spaces, 2 van accessible and 5 standard) and a public drop-off area will be provided at the Historic District. The general public will be allowed to drop off beach equipment such as coolers, chairs, dive gear, etc., near the existing garage area and then park their vehicles at the Los Trancos lot. Consequently, the parking provided for the proposed project is considered adequate to serve the interim use of the site.

The Historic District at Crystal Cove has remained open to the public since the cottages were vacated in July 2001 and will remain open during implementation of the *Investigations*

*and Interim Development Plan.* Areas that pose potential safety concerns (such as damaged boardwalk segments and stairways) have been closed for repair. However, the adjacent sandy beach and marine reserve has remained available for public use. In addition, multiple walking tours (open to the public) have been provided through the site. The applicant intends to continue such use of the site while the interim development measures are being carried out, thereby providing a lower cost visitor-serving opportunity consistent with Section 30213 of the Coastal Act.

As cited previously, Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. The Historic District reuse project presents an opportunity for increased visitor-serving development in the future. The current proposal involves only an interim development plan for the site. A long-term plan has not been finalized and will be considered separately by the Commission. To ensure that the future *Preservation and Public Use Plan* provides maximum public access and recreational opportunities, the Commission imposes Special Condition 3. As discussed in Section C, the condition informs the applicant that future development at the Historic District must be submitted for Commission review.

Thus, only as conditioned to obtain Commission approval for any future improvements to the property (including change in use or change in intensity of use) does the Commission find the proposed development consistent with Sections 30213 and 30252 of the Coastal Act.

## **E. WATER QUALITY**

Section 30230 of the Coastal Act states, in pertinent part:

*Marine resources shall be maintained, enhanced, and where feasible, restored.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Sections 30230 and 30231 of the Coastal Act require maintenance and restoration of marine resources and ensure that the biological productivity of coastal waters is upheld and restored where feasible. Specially, Section 30231 requires the quality of coastal waters to be maintained through the minimization of adverse effects of wastewater discharges. Storm water flows from the Historic District discharge into coastal waters via direct runoff or via Los Trancos Creek. As described previously, the coastal waters located directly off the Historic District are within a designated Area of Special Biological Significance (ASBS). In addition, the site is subject to Cease and Desist Order (CDO) 00-87 issued by the Santa Ana Regional Water Quality Control Board on November 16, 2001. Discharges from nearby construction projects, Pacific Coast Highway and the Historic District septic system were suspected of contributing to non-point source pollution. As such, the CDO required the dischargers (including DPR, the Irvine Company and Caltrans) to cease and desist from discharging or threatening to discharge wastes directly to the Crystal Cove ASBS.

DPR conducted a characterization study of the discharges from its facilities to determine if any waste constituents are present in its discharges. The study included storm water and soil sampling and analyses. On July 8, 2001, the DPR ceased operation of the 46 residential cottages in Crystal Cove, thereby eliminating sewage disposal into the on-site septic systems. As a replacement measure for users of the Historic District, DPR has proposed an interim sewer system using above-ground sewage holding tanks. The Crystal Cove State Park Water Quality Action Plan was presented to the Water Board on September 26, 2001 (Exhibit 7). The plan includes the placement of the temporary sewage holding tanks and the retirement of the existing septic tanks. The applicant anticipates that the Water Board will lift the CDO at its meeting on December 7, 2001. Nonetheless, due to the sensitive nature of the site, special care must be taken in ensuring that high water quality standards are imposed during implementation of the *Investigations and Interim Development Plan*.

#### Construction

Storage or placement of construction materials, debris, or waste in a location subject to entry into the ocean or Los Trancos Creek would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters (including creek beds) not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged to coastal waters may cause turbidity which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species ability to see food in the water column.

As described previously, the proposed project involves various structural repairs (including those to the cottages and boardwalk) and the installation of an interim sewage holding system. Approximately ten (10) cubic yards of cut is anticipated in order to install the new pumps for the sewage system. The applicant has indicated that the excavated material will be redistributed within the existing planter areas. In order to avoid adverse construction-related impacts upon marine resources, Special Condition No. 4 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

#### Monitoring and Maintenance Plan of Interim Sewage Holding System

An On-Site Disposal System (OSDS) is the means by which an individual home or a cluster of homes cleans and disposes of its wastewater. An OSDS is also known as a septic system. A conventional system is composed of a septic tank for pretreatment and a drain/absorption field used for disposal of the wastewater. An inappropriately located, designed, installed, operated, and maintained OSDS could contribute nutrients and pathogens to ground and/or surface waters. When the tenants of the Historic District cottages moved out on July 8, 2001, DPR discontinued use of the existing septic system. Consequently, this action has eliminated the potential that pollutants could be discharged from the septic system to the Crystal Cove ASBS.

As a short-term solution, the applicant proposes to install an Interim Sewage Holding System to replace the current septic system. (DPR intends to connect the Historic District to the adjacent municipal sewer line as a long-term solution). The proposed interim system includes the placement of five (5) above-ground tanks, three (3) pump units and above-ground gravity lines. Two of the pump units will be below-ground and one will be partially below-ground. The below-ground portions of the pump units will be encased in 4" of granular fill. Two (2) 1000-gallon tanks are proposed to serve the Studio Cottages and

Cottages 34 and 35 at the top of the slope. Additionally, three (3) holding tanks (two 1500-gallon and one 1000-gallon) are proposed to serve the Shake Shack and the cottages slated for immediate stabilization and reuse (Cottages 14, 21 and 22). At this location, the proposed tanks will be located approximately 50 feet from the shore. As such, proper inspection and maintenance is required to assure that no effluent is discharged to coastal waters. To assure that this is carried out, Special Condition No. 5 requires the applicant to submit for review and approval, a Monitoring and Maintenance Plan for the Interim Sewage Holding System. The plan shall demonstrate that the system is located, designed, installed, operated, inspected, and maintained to prevent the discharge of pollutants to the surface of the ground and to the extent practicable reduce the discharge of pollutants into groundwater.

Only as conditioned for appropriate storage of construction materials and equipment, location of an appropriate debris disposal site, and submittal of a Monitoring and Maintenance Plan does the Commission find that the proposed development is consistent with Sections 30230 and 30231 of the Coastal Act.

#### **F. ENVIRONMENTALLY SENSITIVE HABITAT AREA**

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The project site is located within Crystal Cove State Park. While the majority of the park is designed to promote native ecology and to minimize the impact of visitors on park resources, the project site is located in a portion of the park which has been previously disturbed for construction of the Historic District cottages. As described in the Final EIR for the proposed project,

*“Within the Historic District proper, little if any natural vegetation exists, and Los Trancos Creek has been highly modified from the Pelican Hills Golf Course on the east side of Highway 1 to its outlet at the ocean... However, the lush landscape vegetation and availability of freshwater provides habitat for a variety of birds and other wildlife, primarily those more typically associated with human habitation...”*

While the Historic District contains primarily ornamental non-native vegetation, the bluffs and terraces on either side of the Historic District support native vegetation of southern coastal bluff scrub and coastal sage scrub. This habitat supports the federally threatened California Gnatcatcher and other native wildlife species. As stated in the FEIR, *“California gnatcatcher disperse through the Historic District and across the highway, but the Department’s intensive studied have not documented California gnatcatchers breeding in the Historic District.”* Additionally, two rare plant species are known to occur on the coastal terrace, including many-stemmed dudleya and Turkish rugging.

The majority of work proposed as part of the current application will occur within the Historic District boundary, away from sensitive resources on the bluffs and/or terraces. Work will be contained to the cottages and their immediate surroundings. Nonetheless, all activities will be monitored by a State Park ecologist to prevent potential impacts to rare plants or the

California Gnatcatcher. Based on the information contained in the FEIR, the project will not result in a significant adverse affect on plant or animal species at the subject site.

While the Historic District itself is not considered an environmentally sensitive habitat area, it is located directly adjacent to an area designated as a Marine Life Refuge by the California Department of Fish and Game and as an Area of Special Biological Significance (ASBS) by the State Water Resources Control Board. As such, the proposed project is located in an area adjacent to an ESHA, within a parks and recreation area, and drains to a site characterized as an ESHA. Therefore, the Commission must assure that the proposed development (in this case, the sewage holding tanks) is appropriately sited and does not result in significant adverse effects to water quality in the surrounding area.

The Commission finds that proposed development will be carried out in a manner that is sensitive the adjacent resources. The proposed sewage holding system will provide an interim solution to store and dispose of wastewater discharge from the cottages until such time as a long-term system is approved. The holding system will replace the septic system, which was potentially damaging to water quality and sensitive marine resources. Additionally, the Commission has imposed Special Conditions 4-6 discussed in Section E. These conditions relate to the improvement of water quality both during and after construction of the proposed facility. Only as previously-conditioned does the Commission find that the proposed development is consistent with Section 30240 of the Coastal Act.

## **G. CULTURAL RESOURCES**

Section 30116 of the Coastal Act states, in pertinent part,

*"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:*

*(d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*

Section 30244 states, in pertinent part,

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The Coastal Act requires reasonable mitigation measures to be imposed *"where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer."* In addition, the General Plan of the certified PWP includes a discussion and policies regarding the management and protection of cultural resources. The management of cultural resources is governed by Sections 5019.74, 50/97.5 and 5097.9 of the Public Resources Code.

Numerous archaeological sites have been identified throughout Crystal Cove State Park. The Historic District contains a number of potential sites. The PWP contains specific recommendations for the cultural resources identified by geographic area. The policies of the PWP call for the use of proper archaeological methods and agreed upon disposition of resources where cultural resources are likely to be found.



A portion of the proposed development may involve potential impacts to cultural resources since it includes subsurface activity for installation of the sewage pumps. As described previously, the eight grinder pumps/sump tanks will be located below grade, as a gravity system is not feasible. The sites of the proposed below grade pumps are not anticipated to be potential archaeological sites. The applicant (DPR) has stated that an on-site archaeological professional will be monitoring all activities involving ground disturbance and grading during implementation of the *Investigation and Interim Development Plan*. In addition, all work will be done in a manner that complies with the *Secretary of the Interior Standards for the Treatment of Historic Properties* (Weeks and Grimmer 1995), which requires archaeological resources to be protected and preserved in place (Exhibit 8).

To ensure that the proposed project does not affect archaeological resources, the Commission finds it necessary to impose Special Condition 6. Special Condition 6 requires the applicant to have a certified archaeological field observer monitor proposed excavation activities to minimize any potential adverse effects to archaeological resources. This condition will ensure that excavation for the grinder pumps/sump tanks will not result in adverse effects to potential cultural and historic resources located at the subject site. As conditioned, the Commission finds that the proposed project is consistent with Section 30244 of the Coastal Act.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located within a State Park adjacent to the shoreline. The proposed development has been conditioned as follows to assure the proposed project is consistent with the public access, water quality and ESHA policies of the Coastal Act: 1) submittal of an agreement to assume the risk associated with development at the site; 2) submittal of an agreement not to construct a future shoreline protective device should one be needed to protect the cottages or associated development; 3) submittal of an agreement that future development be reviewed by the Commission; 4) use of construction best management practices (BMPs); 5) submittal of a maintenance and monitoring plan for the Interim Sewage Holding System; and 6) archaeological monitoring.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA and the Chapter Three policies of the Coastal Act.